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2026 IL App (3d) 250654-U

Order filed October 22, 2026

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2026

PHILLIP KENNY,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-25-0654
	)	Circuit No. 25-LA-39
	)	
ILLINOIS DEPARTMENT OF HUMAN	)	
SERVICES,	)	Honorable
	)	Victoria R. Breslan,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BRENNAN delivered the judgment of the court.
Justices Davenport and Bertani concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court applied an incorrect legal standard in denying the Department's motion to vacate the default judgment. We vacate the denial and remand with directions to apply the proper standard. Vacated and remanded.
- ¶ 2 On July 22, 2025, the trial court entered a default judgment in favor of plaintiff-appellee, Phillip Kenny, a self-represented litigant, and against defendant-appellant, the Illinois Department of Human Services (Department). On August 7, 2025, the Department unsuccessfully moved to vacate the default judgment pursuant to section 2-1301(e) of the Code of Civil Procedure (Code).

735 ILCS 5/2-1301(e) (West 2024). The Department appeals, arguing that the trial court improperly applied the more burdensome legal standard associated with vacating judgments pursuant to section 2-1401 of the Code. *Id.* § 2-1401. We agree; accordingly, we vacate the denial and remand the case for the trial court to consider the Department’s section 2-1301(e) motion under the proper standard. We decline the Department’s invitation to award further relief by bypassing remand and granting its section 2-1301(e) motion. Vacated and remanded.

¶ 3

I. BACKGROUND

¶ 4

On January 15, 2025, Kenny filed a civil complaint alleging that the Department violated the Americans with Disabilities Act of 1990 (Act), 40 U.S.C. § 12101 *et seq.* (West 2020); see *Jackson v. Sweet Ideas, Ltd. Partnership*, 321 Ill. App. 3d 1029, 1033 (2001) (“Although actions under the Act raise questions of federal law, state courts have concurrent jurisdiction with federal courts over claims under the Act”). Specifically, Kenny alleged that the Department failed to accommodate his disability, a severely compromised immune system, when it refused his September 2020 request to work from home during the COVID pandemic. As a result, Kenny was “[f]orced to use all of his sick leave” and retire early. Kenny attached a December 15, 2020, charge of discrimination that he had filed with the Equal Employment Opportunity Commission (EEOC), as well as the EEOC’s January 18, 2024, letter of determination, which found “reasonable cause to believe” that the Department failed to provide Kenny with a reasonable accommodation and retaliated against him for requesting one. Kenny also attached a December 4, 2024, letter from the United States Department of Justice informing Kenny that it declined to file suit on his behalf but that he had a right to initiate his own lawsuit within 90 days.

¶ 5

In addition, on April 2, 2025, Kenny received a letter from the Illinois Department of Human Rights. The letter informed Kenny that the Department of Human Rights had adopted the

position of the EEOC and found substantial evidence that a civil rights violation had been committed. The Department of Human Rights advised Kenny to file a complaint with its commission or file a civil action in state court. As Kenny had already done the latter, he filed the April 2, 2025, letter as an exhibit in the instant civil action.

¶ 6 On May 5, 2025, the trial court conducted an initial case management hearing. Kenny appeared, but the Department did not. The trial court understood that, on January 15, 2025, Kenny attempted service to the Department at the local (Joliet) address. However, Assistant State's Attorney, Erika Hamer, acting as friend of the court, informed the court that Kenny could only serve the Department at either the Springfield or the Chicago address. On May 5, 2025, the court entered an order issuing an alias summons to the Springfield address. The record contains a May 14, 2025, affidavit of service on the Department's Springfield address.

¶ 7 On June 17, 2025, the trial court conducted another status hearing. Again, Kenny appeared but the Department did not. The court informed Kenny that, before it would entertain consideration of a default order based on the Department's failure to appear, it would need an affidavit of service. Kenny filed the affidavit of service, referenced above, later that day. A June 17, 2025, docket entry records that on plaintiff's motion, an order of default was entered; the matter was set for a default prove-up on July 22, 2025.

¶ 8 On July 22, 2025, the trial court conducted a prove-up hearing, with the following opening comments:

“Show that the State was found in default on the prior court date of June 17th. Service is established and filed. I believe there was service on the Joliet office and service on the Springfield office.

The Court has reviewed all exhibits. Showing that the EEOC found in the Plaintiff's favor. He was given a letter [regarding his] Right-to-Sue. Filed suit in an appropriate time. The State has not come forward to file any appearance or answer. That default entered, and we are now moving to prove up."

¶ 9 Kenny testified that he sought \$180,000 in damages, representing \$80,000 for one year of lost wages and \$100,000 for "punitive damages for the stress, the aggravation, the frustration, the strain on [his] marriage[.]" Kenny informed the court that, "truly," this litigation has taken "years off [his] life." Kenny also sought court costs of \$471. Kenny recounted the numerous actions he had taken to secure relief, including working with the EEOC as they attempted to obtain a settlement on his behalf.

¶ 10 The trial court noted that, in accordance with its review of the file, Kenny had done "everything [he] could do in this matter." The court entered an order of default judgment and granted Kenny the full requested relief. It also admonished that, once the Department received the default judgment, it "may try to come in and vacate it. We'll see." The court instructed Kenny to appear on September 9, 2025, to receive a memorandum of judgment.

¶ 11 On July 28, 2025, the Department entered an appearance. On August 7, 2025, the Department moved to vacate the default judgment pursuant to section 2-1301(e) of the Code. 735 ILCS 5/2-1301(e) (West 2024). The Department argued that vacating the order was necessary to achieve substantial justice between the parties. In support, it alleged that the June 17, 2025, default order was entered less than 45 days from the May 4, 2025, issuance of an alias summons and prior to its legal counsel's appearance. It also alleged that the July 22, 2025, default judgment was then entered 35 from the default order and, again, prior to its legal counsel's appearance. Finally, it

alleged that there did not appear to be any effort on Kenny's part to provide it with notice of the July 22, 2025, hearing.

¶ 12 On August 16, 2025, Kenny responded and was later permitted to add a supplemental response. He argued that the default was proper because the Department failed to appear, despite being served with summons. Kenny was certain that the Department received the initial January 16, 2025, summons, based on his familiarity with the local Joliet office and personal acquaintance with the Department agent, Kim Wright, who handled the mail and processed official documents. A Sheriff's Return from that date confirms that the summons was delivered to Wright. When the Department failed to appear on May 5, 2025, the court issued an alias summons which was confirmed received on May 14, 2025, and which notified the Department of the June 17, 2025, court date. On June 17, 2025, the Department again failed to appear. Kenny sent the Department notice of the upcoming, July 22, 2025, hearing for a default judgment, as documented by a FedEx receipt. Handwritten at the top of the receipt were the words "Received 6/20/25 at 10:29 a.m." and signed for by "S. Morris." In addition, Kenny argued that the Department had failed to show due diligence and a meritorious defense.

¶ 13 On August 19, 2025, the trial court conducted a hearing, wherein the Department, through the Attorney General's office, argued that "somewhere along the way," service did not get passed down to "our" office. "At some point," the Department received notice of the default order and judgment, notified the Attorney General's office, and the Attorney General's office "immediately" filed an appearance and moved to vacate. The court then addressed Kenny:

"Mr. Kenny, we talked about the possibility that once the default judgment entered, that would get someone's attention—

And they may come in and ask to have that vacated. So they have the right to do that within 30 days and then the case begins, okay—”

¶ 14 Kenny then asked the trial court whether the Department was required to show a meritorious defense. The court answered that, although the Department had to explain why it did not initially appear and answer, the court would grant the motion to vacate if it was filed within 30 days. The court orally granted the motion and gave the Department leave to answer the complaint. However, through more back-and-forth between the court and Kenny, the court came to realize that Kenny had filed a written response in opposition that it had not seen because it had “just hit the computer.” The court struck its earlier ruling to grant the motion and continued the hearing so that it could consider Kenny’s response.

¶ 15 On September 9, 2025, the trial court and parties reconvened for argument on the Department’s section 2-1301(e) motion to vacate the default judgment. The Department argued that vacating the judgment was necessary to do substantial justice by the parties and noted that, as soon as it received notice of the judgment, it appeared and moved to vacate. Kenny replied that substantial justice would not be served if the judgment were vacated and noted that the Department had received multiple notices, going back to January 2025. The Department did not appear prior to the judgment and, instead, showed a pattern of “willful neglect.” Kenny again argued that the Department had failed to show due diligence and a meritorious defense and stated that the Department had not challenged the merits of his underlying case. The Department replied that it did not need to show a meritorious defense and reiterated that the standard was whether vacating the default judgment was necessary to achieve substantial justice. The trial court took the matter under advisement.

¶ 16 On November 17, 2025, the trial court entered a written order denying the Department’s section 1301(e) motion to vacate the default judgment. The court made several factual determinations, including that Kenny properly served the Department in accordance with section 2-211 of the Code (735 ILCS 5/2-211 (West 2024)), and the Department had not submitted clear and convincing evidence to the contrary. It also found that Kenny

“submitted substantial evidence for the Default Judgement prove-up hearing, including an affidavit and testimony under oath describing the denial of reasonable accommodations, hospital and VA records supporting disability claims, [Department] policies showing that remote work was permitted for other employees, an EEOC determination letter confirming violations and retaliation, and employment records documenting the claims.”

¶ 17 The trial court began its legal analysis by stating: “Under Illinois law, a court may vacate a default judgment within thirty days of entry *if the defendant demonstrates both a meritorious defense and due diligence in responding to the lawsuit*. The burden of proof rests with the moving party, which *must* establish both elements by a preponderance of the evidence.” (Emphases added.) It then found: (1) the Department did not exercise due diligence in responding to the lawsuit and, “despite having over six months from the filing of the initial complaint, [the Department] failed to appear at multiple scheduled hearings and did not act until the filing of the present motion”; (2) the Department did not demonstrate the existence of a meritorious defense, failing to counter Kenny’s “substantial” evidence with anything other than “conclusory statements regarding potential defenses” and no supporting facts; and (3) vacating the default judgment was not necessary to achieve substantial justice between the parties but, rather, “would reward [the Department’s] repeated inaction and neglect of proper service, contrary to the interests of justice.” This appeal followed.

¶ 18

II. ANALYSIS

¶ 19

The Department argues that the trial court failed to apply the correct standard in denying its section 2-1301(e) motion to vacate the default judgment *within* 30 days and, instead, applied the more exacting section 2-1401 standard used in evaluating motions to vacate final judgments *after* 30 days. 735 ILCS 5/2-1301(e) (West 2024) (“The court may in its discretion *** set aside any default, and may on motion filed within 30 days after the entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable”); *id.* § 2-1401 (“Relief from final orders and judgments, after 30 days from the entry thereof, may be had upon petition as provided in this Section”). The Department argues that, at a minimum, this court should vacate the denial of the motion and remand with directions to apply the section 2-1301(e) standard. The Department further argues that, because “only one conclusion” may reasonably be drawn from the “undisputed” facts in this case, we should vacate the default judgment itself so as not to “delay the ultimate resolution of these proceedings.” See *In re Haley D.*, 2011 IL 110886, ¶ 68. Specifically, the Department argues that it did not receive adequate notice of the July 22, 2025, prove-up hearing, because Kenny did not submit a certification of service pursuant to section 1-109 of the Code (735 ILCS 5/1-109 (West 2024)). It also argues that justice requires vacating the judgment because the damages award was unduly severe and punitive damages are not allowed under the Act. See 42 U.S.C. § 1981a(b)(1) (West 2020) (disallowing punitive damages against a government agency); but see *id.* §1981a(b)(3) (classifying nonpecuniary damages for mental anguish and the like as separate from punitive damages).

¶ 20

Kenny responds that the trial court did apply the correct, section 2-1301(e) standard, “properly focus[ing] on whether substantial justice would be served by vacating the judgment, while appropriately considering due diligence and strength of the defense as relevant factors.”

Kenny argues that substantial justice favors affirmance because vacating the judgment would “reward [the Department’s] prolonged inaction and cause further hardship and prejudice to [Kenny], who has already waited years for resolution.” Kenny acknowledges that default judgments are disfavored, but he urges that they are “appropriate when a defendant with actual notice repeatedly ignores court process.”

¶ 21 The trial court’s decision to deny a section 2-1301(e) motion to vacate a judgment within 30 days is reviewed for an abuse of discretion. *Godfrey Healthcare & Rehabilitation Center, LLC v. Toigo*, 2019 IL App (5th) 170473, ¶ 38. A court abuses its discretion if no reasonable person would take the same position or when it applies the wrong legal standard. *People v. Thompson*, 2020 IL App (1st) 171265, ¶ 84 (reasonable person); *A & R Janitorial v. Pepper Construction Co.*, 2018 IL 123220, ¶ 15 (legal standard).

¶ 22 In deciding whether to grant a section 2-1301(e) petition to vacate, “the overriding consideration is simply whether or not substantial justice is being done between the litigants and whether it is reasonable, under the circumstances, to compel the other party to go to trial on the merits.” *Haley D.*, 2011 IL 110886, ¶ 57. Factors to consider when deciding whether substantial justice has been done include the hardship on the plaintiff if it is required to proceed to trial as well as the severity of the consequences to the defendant should the judgment remain in effect. *Jones v. Unknown Heirs or Legatees of Fox*, 313 Ill. App. 3d 249, 255 (2000). “Although relevant, the [movant] need not necessarily show a meritorious defense and a reasonable excuse for failing to timely assert such defense.” *Wells Fargo Bank, N.A. v. McClusky*, 2013 IL 115469, ¶ 16. The court is to remain mindful that the entry of a default judgment is a drastic remedy, and the law prefers that controversies be resolved according to the parties’ substantive rights. *Haley D.*, 2011

IL 110886, ¶69. Still, the decision remains within the court’s discretion, and the court should consider all events leading up to the judgment. *Id.*

¶ 23 A party seeking relief from a final judgment pursuant to section 2-1401 of the Code faces a “substantially greater” burden. *Haley D.*, 2011 IL 110886, ¶ 58. The movant must show, by a preponderance of the evidence, “not only the existence of a meritorious claim or defense in the original action, but also due diligence in pursuing the claim or defense in the circuit court as well as due diligence in presenting the petition for relief under section 2-1401[.]” *Id.*

¶ 24 We first address whether the trial court applied the correct legal standard in denying the Department’s section 2-1301(e) motion. We conclude that it did not. The trial court wrote in its order, “Under Illinois law, a court may vacate a default judgment within thirty days of entry if the defendant demonstrates both a meritorious defense and due diligence in responding to the lawsuit. The burden of proof rests with the moving party, which *must* establish both elements by a preponderance of the evidence.” (Emphasis added.) This is a plain misstatement of the law. See, *e.g.*, *Wells Fargo*, 2013 IL 115469, ¶ 16 (a movant is not required to show due diligence or a meritorious defense).

¶ 25 We appreciate Kenny’s argument that, at other points in its written order, the trial court alluded to the proper standard. It explained that “substantial justice” did not require it to overlook the Department’s lack of a meritorious defense and due diligence. It also performed a brief substantial justice analysis, noting that vacating the default judgment would reward the Department’s “repeated inaction and neglect of proper service, contrary to the interests of justice.” However, even if these examples were by themselves enough to show the trial court’s understanding that relief under section 2-1301(e) is to be liberally granted, they are insufficient to overcome the trial court’s earlier, plain misstatement of the law. Simply put, the trial court applied

an incorrect legal standard in denying the Department's section 2-1301(e) motion to vacate the default judgment.

¶ 26 The Department agrees that the usual remedy where the trial court applies the incorrect legal standard in this context is to vacate the denial and remand for the court to apply the proper standard. See *Jackson v. Hooker*, 397 Ill. App. 3d 614, 621 (2010); *Washington Mutual Bank, F.A. v. Archer Bank*, 385 Ill. App. 3d 427, 429-32 (2008); *Bank & Trust Co. v. Line Pilot Bungee*, 323 Ill. App. 3d 412, 414 (2001); *In re Adoption of D.*, 317 Ill. App. 3d 155, 161-62 (2000); and *Stotlar Drug Co. v. Marlow*, 239 Ill. App. 3d 726, 727-29 (1993). While the Department asks for this relief in the alternative, its first preference is for us to simply grant its section 2-1301 motion and remand for a resolution on the merits.

¶ 27 In support, the Department cites *Haley D.*, 2011 IL 110886, ¶ 68, where the supreme court granted the defendant's section 2-1301(e) motion instead of remanding the matter for the trial court to apply the correct standard in the first instance. In *Haley D.*, the supreme court acknowledged that, "[n]ormally, where a [trial] court is found to have applied the wrong standard, we reverse and remand to give it the opportunity to apply the correct standard." *Id.* It determined, however, "the undisputed facts and governing legal principles permit[ted] only one conclusion in [the case before it]: [the movant father's] request to vacate the finding of default [in termination proceedings] should have been granted." *Id.*

¶ 28 Specifically, the supreme court reasoned that a remand for a hearing applying the correct standard would merely delay the ultimate resolution of the State's petition to terminate the father's parental rights, and it noted that it had an express policy in favor of expeditiously resolving cases involving child custody and the termination of parental rights. *Id.* It stressed that several factors "mitigate[d] strongly" in favor of granting relief to the father. *Id.* ¶ 91. For example, the father

did not receive notice of the termination proceedings (*Id.* ¶ 80); the father had attempted to attend what he thought was a permanency review hearing (having not received notice that the State had filed a termination petition), but he was held back due to his efforts to care for four other children in his care (*Id.* ¶ 80); the trial court entered the default after receiving misinformation about the posture of the case from the State (*Id.* ¶ 81); the father’s attorney appeared within 30 days and advised the court of her intention to seek to vacate the default order of termination and further indicated that she would have appeared earlier but for a serious medical condition (which the State did not dispute) (*Id.* ¶ 82); it was “clear from the record” that the father had a meritorious defense (though he was not required to show it in order to receive the requested procedural relief) in that the State’s termination petition set forth a basis of unfitness that applied to the mother and not the father and failed to set forth the correct 9-month period (*Id.* ¶ 88); and, critically, the fundamental liberty interest at stake—the right to raise one’s own biological child—should be heard on the merits where possible (*Id.* ¶ 90). In contrast to these factors, the supreme court was “unable to identify any valid countervailing considerations that would justify allowing the default to remain in effect[.]” *Id.* ¶ 91.

¶ 29 The circumstances of the instant case are easily distinguishable from those in *Haley D.* Unlike in the parental termination context, the legal dispute here does not invoke an “express policy” calling for expeditious resolution (*Id.* ¶ 68). Also, while the Department was not required to prove a meritorious defense or due diligence for purposes of its section 2-1301 motion to vacate, these are issues that, if developed, may be potentially relevant to section 2-1301’s substantial justice analysis.

¶ 30 Accordingly, the instant circumstances do not call for us to deviate from the “normal” remedy. *Id.* Facts here are disputed and the governing legal principles do not “permit only one

conclusion.” *Id.* It is for the trial court on remand to consider the circumstances in this case in conjunction with the remaining issues raised by the parties, such as the adequacy of the notice and the appropriateness of the damages. We vacate the denial of the motion to vacate and remand for the trial court to consider the Department’s section 2-1301(e) motion under the proper standard.

¶ 31 Finally, we reject each party’s respective request for relief under the Illinois Supreme Court Rules. We decline the Department’s request to find Kenny’s arguments forfeited for failure to consistently cite supporting authority or the pages in the record upon which he relied (Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020)). Any shortcomings with respect to Rule 341(h)(7) have not hindered our review. See, *e.g.*, *Hall v. Naper Gold Hospitality, LLC*, 2012 IL App (2d) 111151, ¶ 7. In addition, we decline Kenny’s request for the imposition of sanctions pursuant to Rule 375 (Ill. S. Ct. R. 375 (eff. Feb. 1, 1994)); the Department’s appeal was not frivolous.

¶ 32 III. CONCLUSION

¶ 33 The order of the circuit court of Will County denying the section 2-1301(e) motion is vacated, and the cause is remanded with directions to consider the motion under the proper section 2-1301(e) standard.

¶ 34 Vacated and remanded.